# 2001 CASE DIGEST INDEX **VOLUME 37**

Editor's Note: The cases in the Index have been classified to conform to the Criminal Law Digest (Third Edition).

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### PART I-STATE CRIMES

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#### § 3.05 Assault

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# § 3.195 Vehicular homicide

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#### § 3.200 Manslaughter

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# PART II—STATE CRIMINAL PROCEDURES, ANCILLARY PROCEEDINGS

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#### § 15.145 Intent and willfulness

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#### § 15.165 "Missing witness" instructions

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#### § 15.320 Requirement of unanimity

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Illinois People v. Johnson, 730 N.E.2d 1107

(2000), 37 CLB 112. Burden shifted to state to prove competency at post-conviction hearing.

#### § 16.30 Motion to dismiss due to mistrial

**Indiana** Sivels v. State, 741 N.E.2d 1197 (2001), 37 CLB 428. Defendant could be retried after two mistrials.

Vermont State v. Fitzpatrick, 2001 WL 258046 (2001), 37 CLB 429. Court could dismiss case with prejudice after two hung juries.

#### § 16.35 Sexual offender classification

**Ohio** State v. Eppinger, 743 N.E.2d 881 (2001), 37 CLB 534. Defendant at sexual offender hearing may have right to have court appoint expert witness.

# 17. SENTENCING AND PUNISHMENT

#### § 17.05 Right of allocution

**Oregon** State v. Rogers, 4 P.3d 1261 (2000), 37 CLB 282. Judge erred in editing allocution statement in capital case.

# § 17.90 Credit for time spend in custody prior to sentencing

Pennsylvania Com. v. Chiappini, 782 A.2d 490 (2001), 37 CLB 685. Home confinement in electronic monitoring program was "custody."

# § 17.100 Imposition of fines and court

Minnesota State v. Rewitzer, 2000 WL 1310494 (2000), 37 CLB 111. Fines for drug dealing were excessive.

## § 17.101 Imposition of restitution

Iowa State v. Izzolena, 609 N.W.2d 541 (2000), 37 CLB 112. Statute granting

\$150,000 minimum restitution to deceased victim was constitutional.

#### 18. APPEAL AND ERROR

### § 18.140 Request for DNA testing

**Mississippi** Lambert v. State, 777 So. 2d 45 (2001), 37 CLB 427. Petitioner convicted more than twenty years earlier entitled to DNA testing of evidence.

# 19. PROBATION, PAROLE, AND PARDON

#### § 19.00 Conditions for probation

**Nevada** Mangarella v. State, 17 P.3d 989 (2001), 37 CLB 428. Probationers can be required to take polygraphs.

#### 20. PARDON

#### § 20.35 Limitations on prison earnings

Washington Dean v. Lehman, 18 P.3d 523 (2001), 37 CLB 535. State could deduct thirty-five percent of money spouses sent to inmates.

#### 21. ANCILLARY PROCEEDINGS

#### § 21.75 Sentencing and Punishment

**Arkansas** Golden v. State, 21 S.W.3d 801 (2000), 37 CLB 110. Juvenile had no right to offer insanity defense.

#### § 21.80 Commitment proceedings

Ohio State v. Sullivan, 739 N.E.2d 788 (2001), 37 CLB 427. Statute mandating treatment of incompetent defendants was unconstitutional because it failed to consider probability of success.

#### PART III—FEDERAL CRIMES

# 24. NATURE AND ELEMENTS OF SPECIFIC CRIMES

#### § 24.15 Bank-related crimes generally

**U.S. Supreme Court** Carter v. United States, 120 S. Ct. 2159 (2000), 37 CLB 105. Value requirement in banking offense statute held to be element of the offense.

### § 24.45 Conspiracy

Court of Appeals, 8th Cir. United States v. Floyd, 231 F.3d 445 (2000), 37 CLB 213. Variance between indictment and evidence at trial held not to justify acquittal.

#### § 24.65 Drug violations

Court of Appeals, 7th Cir. United States v. Nance, 236 F.3d 820 (2001), 37 CLB 278.

Failure to charge and prove drug quantity held to be harmless error.

#### § 24.100 Firearms violations

U.S. Supreme Court Castillo v. United States, 120 S. Ct. 2090 (2000), 37 CLB 104. Increase in penalty for carrying a machine gun held to be an element of a separate, aggravated crime.

Court of Appeals, 7th Cir. United States v. Walls, 225 F.3d 858 (2000), 37 CLB 108. Defendant held not properly convicted of firearms charge based upon a co-conspirator's possession of gun.

#### § 24.190 Mail fraud

**U.S. Supreme Court** Cleveland v. United States, 121 S. Ct. 365 (2000), 37 CLB 210. License to operate video poker machine held

not to be "property" within meaning of mail fraud statute.

#### 25.CAPACITY

#### § 25.10 Insanity

#### § 25.20 -Expert testimony

Court of Appeals, 2d Cir. United States v. McSherry, 236 F.3d 153 (2000), 37 CLB 108. District court's order requiring defendant to undergo mental examination held to be proper.

#### 27. DEFENSES

#### § 27.20 Immunity from prosecution

**U.S. Supreme Court** United States v. Hubbell, 1205 S. Ct. 2037 (2000). Grant of immunity held to preclude later prosecution.

#### PART IV-FEDERAL PROCEDURES

#### 28. JURISDICTION AND VENUE

#### § 28.00 Jurisdiction of trial court

Court of Appeals, 5th Cir. U.S. v. Bustos-Useche, 2001 WL 1426520 (2001), 37 CLB 680. Defendant convicted for possession of narcotics seized from ship on high seas held not to have standing to challenge jurisdiction.

Court of Appeals, 8th Cir. United States v. Provost, 237 F.3d 934 (2001), 37 CLB 277. Government held to lack authority to prosecute defendant in federal court for state law burglary charges.

### 30. INDICTMENT INFORMATION

#### § 30.00 In general

Court of Appeals, 6th Cir. U.S. v. Wade, 2001 WL 1130843 (2001), 37 CLB 531. Reindictment of defendant on additional charges after refusal to plead guilty upheld.

#### 31. PRETRIAL MOTIONS

# § 31.00 Sufficiency of indictment attacked

#### § 31.10 —Severance

Court of Appeals, 1st Cir. United States v. Houle, 237 F.3d 71 (2001), 37 CLB 279. Refusal to sever defendant from 12 others held not improper.

Court of Appeals, 4th Cir. Goins v. Angelone, 26 F.3d 312 (2000), 37 CLB 109. Fail-

ure to provide results of polygraph test of witness held not to be improper.

Court of Appeals, D.C. Cir. United States v. Chemisola, 225 F. 3d 753 (2000), 37 CLB 107. Mid-trial dismissal of conspiracy count held not to result in misjoinder of defendants.

#### 32. DISCOVERY

#### § 32.00 In general

Court of Appeals, 7th Cir. U.S. v. Reyes, 2001 WL 1381065 (2001), 37 CLB 680. Failure to disclose fact that prosecution witnesses had been discharged from their jobs held not grounds for reversal.

#### 33. GUILTY PLEAS

#### § 33.05 Specific performance

Court of Appeals, 10th Cir. United States v. Peterson, 225 F.3d 1167 (2000), 37 CLB 108. Defendant held not to have waived right to appeal a claim that government had breached a plea agreement.

#### § 33.15 Accepting plea

Court of Appeals, 11th Cir. Pegg v. U.S., 2001 WL 649493 (2001), 37 CLB 426. Attorney's conflict of interest held not grounds for withdrawal of guilty plea.

# § 33.30 —Duty to advise of consequences of plea

Court of Appeals, 8th Cir. U.S. v. Napoles-Garcia, 2001 WL 641564 (2001),

37 CLB 424. Failure of judge to advise defendant that his prior deportation was an element of his illegal entry plea held not basis for reversal.

#### 34. EVIDENCE

### § 34.15 Relevancy and prejudice

Court of Appeals, D.C. Cir. United States v. Smith, 232 F.3d 236 (2000), 37 CLB 210. Testimony of agent tending to "bolster" testimony of informant held not to amount to plain error.

# § 34.45 Proof of other crimes to show motive, intent, etc.

Court of Appeals, 8th Cir. U.S. v. Smith, 2001 WL 1111475 (2001), 37 CLB 530. Defendant's conviction upheld based on government's reference to his "other bad acts."

#### § 34.50 Proof of other bad acts

Court of Appeals, 7th Cir. United States v. Wash, 231 F.3d 366 (2000), 37 CLB 213. Prior bad acts evidence of narcotics possession held to be admissible.

Court of Appeals, D.C. Cir. U.S. v. Sumlin, 2001 WL 1386407 (2001), 37 CLB 681. Introduction of "other bad acts" evidence held not grounds for reversal.

#### § 34.85 Opinion evidence

Court of Appeals, 7th Cir. United States v. Folami, 236 F.3d 860 (2001), 37 CLB 279. Opinion evidence of DEA agent held admissible.

### § 34.220 Hearsay evidence

#### § 34.240 —Documentary evidence

Court of Appeals, 8th Cir. U.S. v. Le, 2001 WL 1426540 (2001), 37 CLB 682. Improper admission of drug lab report held to require reversal.

#### 35. THE TRIAL

### § 35.20 Absence of defendant or counsel

Court of Appeals, 6th Cir. United States v. Carmichael, 232 F.3d 510 (2000), 37 CLB 211. Ex parte communication between prosecutor and court held not to violate defendant's sixth amendment rights.

# § 35.25 Decisions of defense counsel as binding upon defendant

Court of Appeals, 6th Cir. Abu-Ali Abdnr'rahman v. Bell, 226 F. 3d 696 (2000),

37 CLB 106. Defendant held not to be prejudiced by defense counsel's alleged failure to present mitigating evidence.

# § 35.50 Conduct of trial judge

Court of Appeals, 2d Cir. Bowden v. Keane, 237 F.3d 125 (2001), 37 CLB 279. Temporary closure of courtroom during trial held not to be improper.

Court of Appeals, 6th Cir. United States v. Doe, 226 F.3d 672 (2000), 37 CLB 681. In a criminal bench trial, factual findings made by trial judge held to be final unless clearly erroneous.

#### § 35.95 Conduct of prosecutor

Court of Appeals, 6th Cir. United States v. Carter, 236 F.3d 777 (2001), 37 CLB 278. Prosecutor's misconduct held to require reversal.

#### 36. THE JURY SELECTION

#### § 36.00 Requirement of an impartial jury

Court of Appeals, 7th Cir. United States v. Montenegro, 231 F.3d 389 (2000), 37 CLB 213. Trial judge held not required during voir dire to inquire into bias of potential jurors.

# § 36.10 Systematic exclusion of minority group members

Court of Appeals, 3d Cir. U.S. v. Weaver, 2001 WL 1110384 (2001), 37 CLB 530. Defendant's challenge to the jury pool rejected.

### § 36.95 Duty to charge on essential elements of crime Court of Appeals,

**5th Cir.** U.S. v. Dixon, 2001 WL 1441489 (2001), 37 CLB 682. Jury instructions relating to kidnapping indictment held to be permissible.

### § 36.195 Other unauthorized or improper conduct

Court of Appeals, 11th Cir. U.S. v. Abbell, 2001 WL 1379725 (2001), 37 CLB 679. Dismissal of juror for refusal to follow the law upheld.

#### 37. POST-TRIAL MOTIONS

#### § 37.35 Federal habeas corpus

U.S. Supreme Court Artuz v. Bennett, 121 S. Ct. 361 (2000), 37 CLB 210. Defendant's postconviction motion held to be properly

filed within one year of effective date of AEDPA.

Court of Appeals, 7th Cir. Wilkinson v. Cowan, 231 F.3d 347 (2000), 37 CLB 213. Claim of ineffective assistance of counsel held not to have been defaulted.

#### § 37.55 -Waiver or deliberate bypass

Court of Appeals, 10th Cir. United States v. Cockerham, 237 F.3d 1179 (2001), 37 CLB 278. Defendant's waiver in plea of right to bring collateral attack on sentence upheld.

# 38. SENTENCING AND PUNISHMENT

#### § 38.30 Standards for imposing sentence

U.S. Supreme Court Daniels v. U.S., 121 S. Ct. 1578, 149 L. Ed. 2d 590 (2001), 37 CLB 528. Validity of prior convictions held not to be subject to challenge by collateral attack on sentence.

Court of Appeals, 1st Cir. U.S. v. Conley, 2001 WL 1112706 (2001), 37 CLB 530. Defendant's sentence as a "career criminal" upheld.

Court of Appeals, 1st Cir. U.S. v. O'Connell, 252 F.3d 524 (2001), 37 CLB 424. Enhanced sentence based upon abuse of trust upheld.

Court of Appeals, 2d Cir. United States v. Kurtz, 237 F.3d 154 (2001), 37 CLB 279. Sentencing under obstruction of justice guideline upheld.

Court of Appeals, 7th Cir. United States v. Nielsen, 232 F.3d 581 (2000), 37 CLB 211. Defendant held not to have pleaded guilty in sufficiently timely manner to justify reduction in sentence.

Court of Appeals, 7th Cir. United States v. Payne, 226 F.3d 792 (2000), 37 CLB 106. Conduct after a time period listed in indictment held properly considered for sentencing purposes.

Court of Appeals, 7th Cir. United States v. Brazeau, 237 F.3d 842 (2001), 37 CLB 277. Possession of a short-barreled shotgun held to constitute a crime of violence under sentencing guidelines.

Court of Appeals, 7th Cir. United States v. Ramsey, 237 F.3d 853 (2001), 37 CLB 277. Defendant's interaction with his minor brother during commission of crime held to qualify as "use" of a minor.

Court of Appeals, 8th Cir. United States v.

Smith, 232 F.3d 650 (2000), 37 CLB 212. Mandatory life sentence upheld in murderfor-hire case.

Court of Appeals, 8th Cir. U.S. v. Wolf, 2001 WL 1388273 (2001), 37 CLB 681. Government's refusal to move for a "substantial assistance" downward departure in sentencing upheld.

Court of Appeals, 8th Cir. U.S. v. Saul, 2001 WL 641571 (2001), 37 CLB 425. Use of a firearm in connection with a felony held to be basis for enhanced sentence.

Court of Appeals, 9th Cir. United States v. Matthews, 226 F.3d 1075 (2000), 37 CLB 107. Enhancement of sentence based on prior burglary convictions held improper.

Court of Appeals, 9th Cir. United States v Tighe, 2001 WL 1111947 (2001), 37 CLB 530. Enhanced sentence based upon a juvenile adjudication held to be improper.

Court of Appeals, 11th Cir. U.S. v. Maung, 2001 WL 1131647 (2001), 37 CLB 529. A sentence of 39 months and restitution of over \$200,000 for conspiracy to export stolen cars reversed.

Court of Appeals, D.C. Cir. United States v. Maccado, 225 F.3d 766 (2000), 37 CLB 107. Defendant's failure to provide a handwriting exemplar held to justify sentence enhancement.

# § 38.60 Credit for time spent in custody prior to sentencing

Court of Appeals, 1st Cir. U.S. v. Ramirez, 252 F.3d 516 (2001), 37 CLB 423. District court held to be barred from granting defendant a credit for his state sentence.

#### 39. THE APPEAL

#### § 39.00 Right to appeal

Court of Appeals, 2d Cir. United States v. Fisher, 232 F.3d 301 (2000), 37 CLB 210. Defendant's waiver of right to appeal held to be enforceable.

#### § 39.10 Jurisdiction

U.S. Supreme Court Becker v. Montgomery, 121 S. Ct. 1801 (2001), 37 CLB 432. Pro se petitioner's failure to sign notice of appeal held not to require dismissal of appeal.

#### § 39.35 Scope of appellate review

Court of Appeals, 11th Cir. McCoy v. U.S., 2001 WL 1131653 (2001), 37 CLB 529. Defendant held to be procedurally de-

prived from raising issues on a motion to vacate that were not raised on direct appeal.

# 40. PROBATION AND PAROLE

# § 40.20 Standards for determining eligibility for parole

U.S. Supreme Court Lopez v. Davis, 121 S. Ct. 714 (2001), 37 CLB 276. Denial of early release to prisoners whose felonies involve use of firearm upheld.

### § 40.25 Revocation of parole

Court of Appeals, 7th Cir. U.S. v. Trotter, 2001 WL 1360203 (2001), 37 CLB 679. Revocation of parole based on drug use upheld.

#### 41. PRISONER PROCEEDINGS

#### § 41.00 In general

U.S. Supreme Court Booth v. Churner, 121 S. Ct. 1819 (2001), 37 CLB 422. Prison litigation reform act held to require inmate seeking only money damages to complete prison administrative process.

#### § 41.05 Cruel and unusual treatment

U.S. Supreme Court Ramdass v. Angelone, 120 S. Ct. 2113 (2000), 37 CLB 104. Habeas Corpus relief denied because defendant's third conviction under Virginia "three strike" rule was not final at time of murder sentence.

#### § 41.45 Other actions under Federal Civil Rights Act

Court of Appeals, 10th Cir. Medina v. Cram, 252 F.3d 1124 (2001), 37 CLB 425. Civil rights claim against police officers reversed based on qualified immunity.

#### § 41.55 Medical treatment for prisoner

Court of Appeals, 7th Cir. Heard v. Sheahan, 253 F.3d 316 (2001), 37 CLB 423. Dismissal of civil rights suit on statute of limitations grounds held to be improper.

Court of Appeals, 10th Cir. Garrett v. Klingner, 2001 WL 649132 (2001), 37 CLB 425. Grant of summary judgment to prison official in civil rights case upheld.

# 42. ANCILLARY PROCEEDINGS CONTEMPT

### § 42.30 In general

Court of Appeals, 8th Cir. Kilmartin v. Kemna, 2001 WL 664109 (2001), 37 CLB 423. Habeas corpus relief on witness tampering charges held to be procedurally barred

# § 42.40 Statute of limitations in action for damages

Court of Appeals, 9th Cir. Ordonez v. Johnson, 2001 WL 649909 (2001), 37 CLB 423. Dismissal of civil rights claim based on failure to timely file reversed.

### § 42.45 Requirements

**Tex. Crim. App.** Ex parte Potter, 21 S.W.3d 290 (2000), 37 CLB 214. Claim of mental incompetency to be extradited requires limited hearing in asylum state.

#### § 42.50 Foreign Sovereigns

Court of Appeals, 10th Cir. Hall v. Burke, 2001 WL 694142 (2001), 37 CLB 426. Denial of summary judgment in civil rights action upheld.

#### § 42.55 Grounds

Court of Appeals, 11th Cir. United States v. Bernardine, 237 F.3d 1279 (2001), 37 CLB 278. Criminal contempt conviction based on failure to appear upheld.

# § 42.60 In general

Court of Appeals, 1st Cir. Whiting v. United States, 231 F.3d 70 (2000), 37 CLB 212. Mailed notice in forfeiture proceeding held to be sufficient.

#### PART V—CONSTITUTIONAL GUARANTEES

# 43. ADMISSIONS AND CONFESSIONS

#### § 43.00 Involuntariness and coercion

Court of Appeals, 5th Cir. U.S. v. Willis, 2001 WL 1402135 (2001), 37 CLB 680.

Defendant's conviction upheld despite claim that his attorney refused to permit him to testify.

Court of Appeals, 7th Cir. U.S. v. Walker, 2001 WL 1388904 (2001), 37 CLB 681.

Defendant's confession obtained while he was undergoing heroin withdrawal upheld.

# § 43.40 Post-indictment and post-arrest statements

**Michigan** People v. Stevens, 610 N.W.2d 881 (2000), 37 CLB 109. Confession during plea bargain was admissible.

# § 43.55 General construction and operation of *Miranda*

U.S. Supreme Court Dickerson v. United States, 1205 S. Ct. 2326 (2000), 37 CLB 105. Miranda-based warnings held to be constitutionally based and not capable of being overruled by legislative act.

# § 43.60 Prerequisite of custodial interrogation

Court of Appeals, 9th Cir. U.S. v. Michaud, 2001 WL 1117471 (2001), 37 CLB 529. Confession by defendant in kidnapping case held properly admitted into evidence.

### § 43.65 Interpretations by state courts

# § 43.70 —Lack of "interrogation" motive

U.S. Supreme Court Penry v. Johnson, 121 S. Ct. 1910 (2001), 37 CLB 421. Introduction of psychiatric evidence of defendant's future dangerousness held not to violate fifth amendment.

# 44. CONFRONTATION OF WINESSES

# § 44.00 In general

Court of Appeals, 2d Cir. United States v. Petrillo, 237 F.3d 119 (2001), 37 CLB 279. Admission of co-defendants' guilty pleas held not to violate defendant's confrontation rights.

# § 44.15 Co-defendant's out-of-court statements

Court of Appeals, 6th Cir. Vincent v. Seabold, 226 F.3d 681 (2000), 37 CLB 106. Sixth amendment right of confrontation held to be violated by police detective's testimony as to co-defendant's post-arrest statement.

#### § 44.45 Waiver

Court of Appeals, 6th Cir. Bailey v. Mitchell, 2001 WL 1474702 (2001), 37 CLB 682. Need of videotaped depositions at trial held to be proper.

#### 45. RIGHT TO COUNSEL

# § 45.10 Right to counsel of one's own choosing

Court of Appeals, 2d Cir. U.S. v. John Doe #1, 2001 WL 1396518 (2001), 37 CLB 106. Court's refusal to permit substitution of trial counsel held not to be error.

#### § 45.25 Waiver

Court of Appeals, D.C. Cir. U.S. v. Davis, 2001 WL 1435538 (2001), 37 CLB 680. Sixth amendment right to counsel held to be violated by faulty waiver of right to counsel.

# § 45.110 Ineffectiveness

**U.S. Supreme Court** Glover v. United States, 121 S. Ct. 696 (2001), 37 CLB 276. Sentencing error held to require reversal.

U.S. Supreme Court Glover v. U.S., 531 U.S. 198, 121 S. Ct. 696, 148 L. Ed. 2d 604 (2001), 37 CLB 528. Ineffective assistance of counsel in sentencing proceeding held not to require showing that sentence increase was significant.

Court of Appeals, 3d Cir. George v. Sively, 2001 WL 649057 (2001), 37 CLB 424. Defendant held not to have been denied effective assistance of counsel.

Court of Appeals, 10th Cir. Sanders v. Attorney General for New Mexico, 2001 WL 649163 (2001), 37 CLB 425. Alleged failure of counsel to adequately represent defendant held not to provide basis for reversal.

California In re Resendiz, 19 P.3d 1171 (2001), 37 CLB 534. Misrepresentation of immigration consequences of plea can constitute ineffective assistance of counsel.

# § 45.115 —Interpretations by state courts

**Utah** State v. Litherland, 12 P.3d 92 (2000), 37 CLB 215. Defense counsel's failure to remove juror is presumed justifiable.

#### § 45.125 —Incorrect legal advice

Court of Appeals, 8th Cir. Washington v. Kemna, 2001 WL 641588 (2001), 37 CLB 424. Alleged failure to inform defendant of right to testify held not to be basis for a reversal.

# § 45.130 —Failure to introduce evidence or make objections

Court of Appeals, 8th Cir. Garrett v. Dormire, 237 F.3d 946 (2001), 37 CLB 278. Counsel's failure to call witnesses held not

to constitute ineffective assistance of counsel.

#### § 45.140 Duty of appellate counsel

Court of Appeals, 10th Cir. Roberts v. Champion, 2001 WL 694088 (2001), 37 CLB 426. Case remanded for counsel's failure to challenge instruction that defendant was presumed to be "not guilty."

# 46. CRUEL AND UNUSUAL PUNISHMENT

#### § 46.00 In general

#### § 46.01 —Interpretations by state courts

**Louisiana** State v. Smith, 2000 WL 900581 (2000), 37 CLB 112. Treating solicitation of oral sex as a felony was not excessive, even though prostitution was only misdemeanor.

#### § 46.05 Death penalty

Court of Appeals, 3d Cir. United States v. Hammer, 226 F.3d 229 (2000), 37 CLB 109. Finding that defendant could waive right to appeal death sentence held not to violate Eighth Amendment.

Court of Appeals, 6th Cir. Gall v. Parker, 231 F.3d 265 (2000), 37 CLB 212. Death sentence obtained based on failure to consider mitigating factors held to violate due process.

Court of Appeals, 6th Cir. U.S. v. Bass, 2001 WL 1117060 (2001), 37 CLB 528. District court's order granting discovery on government's death penalty charging practices upheld.

#### § 46.10 —Statutory requirements

Court of Appeals, 6th Cir. Fox v. Coyle, 2001 WL 1410363 (2001), 37 CLB 682. Death penalty upheld based upon "aggravating circumstance" involving a crime for which defendant neither charged nor convicted.

#### 47. DOUBLE JEOPARDY

### § 47.00 In general

U.S. Supreme Court Seling v. Young, 121 S. Ct. 727 (2001), 37 CLB 276. Violent predator statute held to be civil rather than criminal.

#### § 47.05 —Interpretations by state courts

California People v. Hanson, 1 P.3d 650 (2000), 37 CLB 111. Increase in fines after

successful appeal violated California double jeopardy clause.

Georgia Perkinson v. State, 542 S.E.2d 92 (2001), 37 CLB 430. Subsequent prosecution for felony underlying vacated felony murder conviction violated Double Jeopardy Clause.

# **48. DUE PROCESS**

#### § 48.00 In general

U.S. Supreme Court Fiore v. White, 121 S. Ct. 712 (2001), 37 CLB 276. Conviction for operating hazardous waste facility without a permit held to violate due process.

U.S. Supreme Court Apprendi v. New Jersey, 120 S. Ct. 2348 (2000), 37 CLB 105. Sentencing provisions in state hate crime statute held to violate due process.

Court of Appeals, 7th Cir. Alvarez v. Boyd, 225 F.3d 820 (2000), 37 CLB 107. Trial court's exclusion of evidence held not to violate due process.

# § 48.01 —Interpretations by state courts

**Pennsylvana** Com. v. Kratsas, 764 A.2d 20 (2001), 37 CLB 531. Government tolerance of gambling did not establish due process reliance.

**South Carolina** State v. Higgenbottom, 542 S.E.2d 718 (2001), 37 CLB 534. Increasing sentence in response to reconsideration request violated due process.

#### § 48.30 —Sex crimes

Court of Appeals, 9th Cir. United States v. Lee, 232 F.3d 653 (2000), 37 CLB 212. Variance in dates of offense between indictment and proof at trial held not to violate due process.

### 49. EQUAL PROTECTION

#### § 49.00 In general

Court of Appeals, 4th Cir. Fisher v. King, 232 F.3d 391 (2000), 37 CLB 211. Refusal to provide copies of 911 calls held not to violate defendant's civil rights.

# 53. FREEDOM OF SPEECH AND EXPRESSSION

#### § 53.00 In general

U.S. Supreme Court Hill v. Colorado, 120 S. Ct. 2480 (2000), 37 CLB 105. Criminal statute prohibiting persons from approach-

ing health care facilities without consent upheld.

#### 55. RIGHT TO A JURY TRIAL

#### § 55.00 In general

Court of Appeals, 6th Cir. Doan v. Brigano, 237 F.3d 722 (2001), 37 CLB 277. Juror's out-of-court experiment held to be harmless error.

**Arkansas** Etoch v. State, 37 S.W.3d 186 (2001), 37 CLB 429. Judge's contemplation of sentence longer than six months entitled defendant to jury trial.

North Carolina State v. Poindexter, 545 S.E.2d 414 (2001), 37 CLB 534. Post-verdict removal of juror violated defendant's rights.

# 58. PROHIBITION AGAINST UNLAWFUL SEARCHES AND SEIZURES

### § 58.03 Property subject to search

Maryland State v. Sampson, 765 A.2d 629 (2001), cert. denied, 121 S. Ct. 2202, 149 L. Ed. 2d 1032 (U.S. 2001), 37 CLB 535. Trash runs did not violate Fourth Amendment.

#### § 58.10 Property subject to seizure

Rhode Island State v. Briggs, 756 A.2d 731 (2000), 37 CLB 110. Defendant had no privacy rights in his garbage.

**Texas** Schenekl v. State, 30 S.W.3d 412 (2000), 37 CLB 280. Random water safety checks did not violate Fourth Amendment.

#### § 58.20 Abandonment

**Tennessee** State v. Ross, 49 S.W.3d 833 (2001), 37 CLB 686. Defendant had no reasonable expectation of privacy in motel room that he claimed belonged to another.

#### § 58.30 —Automobile searches

U.S. Supreme Court Florida v. Thomas, 121 S. Ct. 1905 (2001), 37 CLB 432. Supreme Court held to lack jurisdiction to decide whether search of a vehicle is part of a custodial arrest even though contact with the person was made when he was outside the vehicle.

Court of Appeals, 1st Cir. U.S. v. Chhien, 2001 WL 1097766 (2001), 37 CLB 529. Pretrial motion to suppress evidence held to be properly denied.

Court of Appeals, D.C. Cir. U.S. v. Davis, 2001 WL 1435538 (2001), 37 CLB 680.

Purpose for roadblock by police held to be critical to review of its legality.

**Oklahoma** State v. McNeal, 6 P.3d 1055 (2000), 37 CLB 110. Setting up drug checkpoints without adequate justification violated Fourth Amendment.

#### § 58.32 Car passengers

Wisconsin State v. Matejka, 241 Wis. 2d 52, 2001 WI 5, 621 N.W.2d 891 (2001), cert. denied, 121 S. Ct. 2207 (2001), 37 CLB 431. Driver's consent to search applied to passenger's jacket.

#### § 58.64 Urinalysis

Indiana Oman v. State, 737 N.E.2d 1131 (2000), 37 CLB 280. Employee drug test results were admissible at trial.

# § 58.70 Stop and frisk

Court of Appeals, 3d Cir. United States v. Valentine, 232 F.3d 350 (2000), 37 CLB 211. Defendant's aggressive conduct held to provide basis for stop and frisk.

Court of Appeals, 7th Cir. United States v. Brown, 232 F.3d 589 (2000), 37 CLB 212. Protecting pat-down search held to be supported by reasonable suspicion.

#### § 58.77 Anticipatory search warrants

Pennsylvania Commonwealth v. Glass, 754 A.2d 655 (2000), 37 CLB 214. Anticipatory search warrants constitutional in Pennsylvania.

# § 58.80 —Sufficiency of underlying affidavit

Court of Appeals, 7th Cir. United States v. Wilson, 237 F.3d 827 (2001), 37 CLB 277. Warrant authorizing roving surveillance of cell phone calls held to be valid.

**South Dakota** State v. Belmontes, 615 N.W.2d 634 (2000), 37 CLB 214. Warrant based on "bare bones" affidavit did not fall under good faith exception.

#### § 58.85 -Validity of warrant on its face

South Dakota State v. Jackson, 616 N.W.2d 412 (2000), 37 CLB 110. "All persons" search warrant did not violate Fourth Amendment.

### § 58.93 -Knock and announce rule

District of Columbia District of Columbia v. Mancouso, 778 A.2d 270 (2001), 37 CLB 684. Defendants who were just outside their residence had standing to challenge violation of "knock and announce" rule.

# § 58.100 —Necessity of obtaining a warrant

U.S. Supreme Court Kyllo v. U.S., 121 S. Ct. 2038 (2001), 37 CLB 421. Use of thermal imaging device held to require warrant.

**Georgia** State v. Peterson, 543 S.E.2d 692 (2001), 37 CLB 535. Warrantless entry to residence was proper where removal of adults by police left minors unsupervised.

# § 58.125 Permissible scope of incidental search

Court of Appeals, 9th Cir. United States v. Reid, 226 F.3d 1620 (2000), 37 CLB 107. Warrantless search of apartment held not valid as a protective sweep.

#### § 58.132 Canine searches

**Tennessee** State v. England, 19 S.W.3d 762 (2000), 37 CLB 213. Canine sweep was not a search.

#### § 58.170 In general

South Carolina State v. Forrester, 541 S.E.2d 837 (2001), 37 CLB 536. Police need not inform citizens that they can refuse to consent to searches.

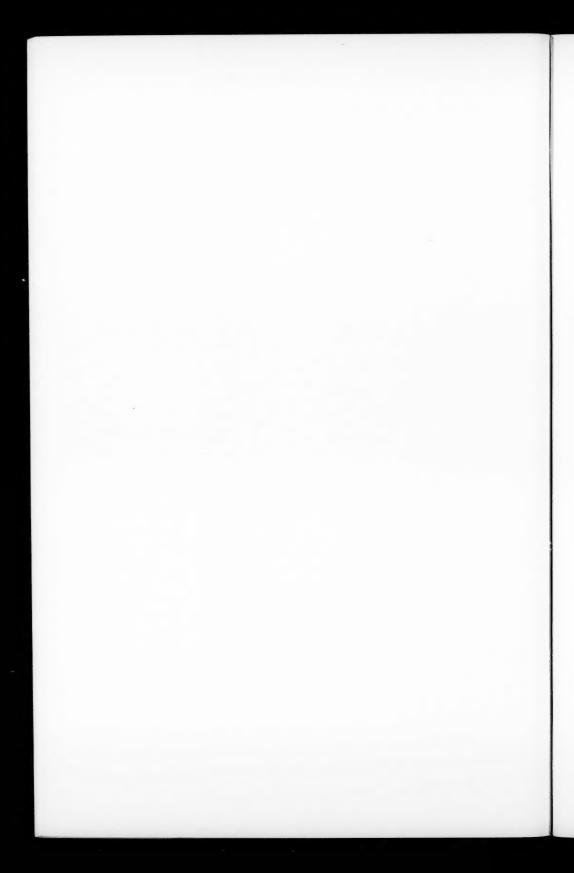
# § 58.225 Evidence held inadmissible

Court of Appeals, 10th Cir. Herrera v. Le-Master, 225 F.3d 1176 (2000), 37 CLB 108. State court determination that admission of evidence seized in violation of fourth amendment was harmless error and was improper.

#### **60. RIGHT TO SPEEDY TRIAL**

#### § 60.00 In general

U.S. Supreme Court Alabama v. Bozeman, 121 S. Ct. 2079 (2001), 37 CLB 421. Interstate agreement on detainers held to require dismissal if defendant is returned to "original place of imprisonment" prior to trial.



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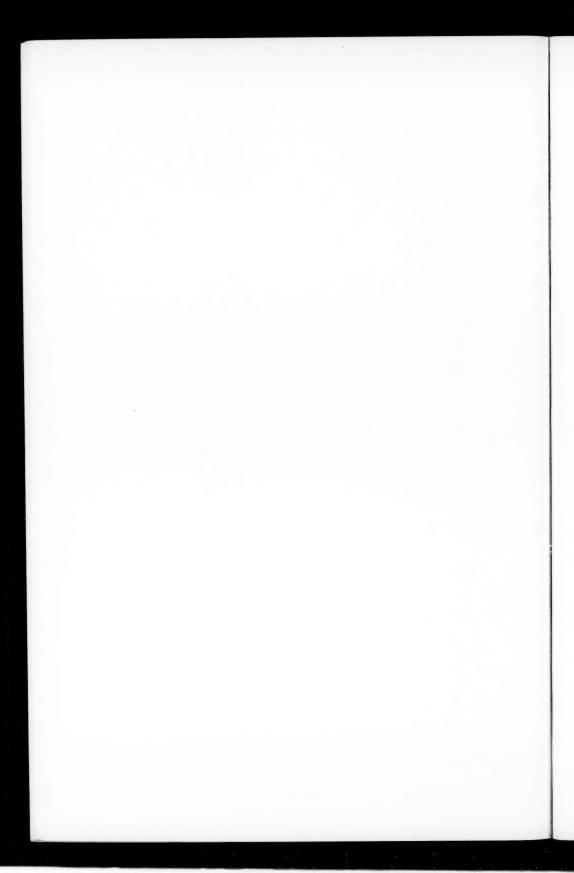
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